Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1267

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, COMPOSED OF ITS MEMBERS PEDRO SANTIAGO RIVERA, LEONEL A. FERNANDEZ, GENARO NEGRON, JUAN M. PORTELO SOLER, GUILLERMO CRUZ AND MILTON CASTRO NAZARIO,

Appellants

v.

MARIA C. FLORES DE OTERO,

Appellee

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS, AND THE MEMBERS OF SUCH BOARD,

Appellants

v.

SERGIO PEREZ NOGUEIRO,

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

FILED APRIL 7, 1975

PROBABLE JURISDICTION NOTED MAY 27, 1975

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1267

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, COMPOSED OF ITS MEMBERS PEDRO SANTIAGO RIVERA, LEONEL A. FERNANDEZ, GENARO NEGRON, JUAN M. PORTELO SOLER, GUILLERMO CRUZ AND MILTON CASTRO NAZARIO,

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RELEVANT DOCKET ENTRIES

I. Maria C. Flores v. Examining Board, etc. Civil No. 917-73

1. 10/15/73—Complaint filed
2. 10/29/73—Order For Defendants To Show Cause, Etc.
3. 12/3/73—Pretrial Memorandum And Order
4. 12/21/73—Defendants Answer to Complaint
5. 5/6/74—Order Designating Members Of Three Judge Court
6. 12/19/74—Opinion of J. Toledo and J. Coffin
7. 12/19/74—Dissenting Opinion of J. Pesquera
8. 12/19/74—Judge Entered
9. 1/22/75—Defendants Notice of Appeal

II. Sergio Pérez Nogueiro v. Board of Examiners, Etc. Civil No. 74-520

1. 5/6/74—Complaint Filed
2. 5/22/74—Order To Show Cause
3. 11/14/74—Order Designating Three Judge Court
4. 12/9/74—Motion To Amend Complaint Granted 12/13/74
5. 2/5/75—Memorandum And Order
6. 2/5/75—Judgment Entered
7. 3/10/75—Notice of Appeal

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL ACTION No. 917-73

MARIA C. FLORES, *Plaintiff*

v.

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS, composed of its members, Pedro Santiago Rivera, Leonel A. Fernández, Genaro Negrón, Juan M. Portela Soler, Guillermo Cruz González, and Milton Castro Nazario,

Defendants

COMPLAINT

(Filed October 15, 1973)

Comes now the plaintiff through the undersigned attorney and respectfully states, alleges and prays as follows:

1. The action arises under the Fifth or Fourteenth Amendment to the Constitution of the United States, under 42 U.S.C. 1981, 42 U.S.C. 1983, and 28 U.S.C. 1343 (3) and (4).

2. The plaintiff is a native of Mexico, not a citizen of the United States, but a legal resident of Puerto Rico. She is by profession a civil engineer.

3. The defendants are the present member of, and compose, the Examining Board of Engineers, Architects and Surveyors of Puerto Rico.

4. The plaintiff applied on June 12, 1972, under the provisions of Law Number 399 of May 10, 1951, as amended, for registration as a licensed engineer, for which she fulfills all the statutory requirements except that of United States citizenship.

5. On June 29, 1972, December 20, 1972, and again most recently on September 19, 1972, the defendant denied plaintiff's application, because she did not meet the citizenship requirement of Section 689, Title 20, Laws of Puerto Rico Annotated.

WHEREFORE, plaintiff prays that this Court:

1. Take jurisdiction of this case and certify, in view of the substantial constitutional nature of the questions raised in the complaint, the necessity for convening a statutory district court of three judges, and that such court be duly and speedily convened to hear and determine the case as provided by law, pursuant to 28 U.S.C. 2281 and 2284, and

2. Adjudge and decree the requirement of United States citizenship contained in 20 L.P.R.A. 689, as amended, unconstitutional on its face because of its operation, enforcement and application as to plaintiff on the following grounds:

(a) It is in conflict with the due process clause in that it amounts to an arbitrary and unreasonable requirement devoid of any rational and justifiable relationship between citizenship and ability and qualifications, and deprives plaintiff of her right to earn a livelihood.

(b) It is repugnant to the equal protection clause in that it arbitrarily and unreasonably establishes an inherently suspect classification based on nationality which has no basis in any compelling state interest, and

3. If the pertinent portion of the statute is ruled unconstitutional, issue a mandatory injunction directed to defendants or their successors in office, compelling them to register plaintiff as a licensed engineer.

San Juan, Puerto Rico, this 15 day of October, 1973.

/s/ MAX RAMIREZ DE ARELLANO
Max Ramirez De Arellano
Boringuen Avenue 267
Santurce, Puerto Rico 00915
722-2322
Attorney for Plaintiff

(Caption Omitted in Printing)

ANSWER TO COMPLAINT

(Filed December 21, 1973)

To the Honorable Court:

Comes now defendants through the undersigned attorneys and respectfully allege and pray as follows:

1. Defendants deny the assertions set forth at paragraph number one (1) of the complaint.

2. Of the allegation at paragraph number two (2) it is admitted that plaintiff is not a citizen of the United States of America and a civil engineer by profession.

3. Allegations at paragraph number three (3) of the complaint are admitted.

4. Of allegations at paragraph number four (4) of the complaint it is admitted that by letter dated September 19, 1973, defendant Board notified plaintiff of the denial of her application for license as a certified engineer until proof of U.S. citizenship was furnished by her.

Affirmative Defenses

1. This Honorable Court, lacks jurisdiction to entertain the complaint and grant the relief sought by plaintiff.

2. Defendants' action in processing plaintiff's application for license as a certified engineer constitute the lawful discharge of governmental functions in accordance with the applicable laws of the Commonwealth of Puerto Rico.

3. In discharging their duties defendants were acting lawfully and in good faith not in violation of plaintiff's constitutional rights.

4. The provisions contained in Section 689 of Title 20 of the Laws of Puerto Rico Annotated are not in conflict, nor do they contravene the rights secured under the Fifth and Fourteenth Amendments to the Constitution of the United States.

5. The requirements of Section 689 of Title 20 of the Laws of Puerto Rico Annotated do not violate any of this rights and protections guaranteed to plaintiff by the Constitution of the United States of America.

6. Plaintiff has not been denied or deprived of her right to earn a livelihood.

7. The provisions of Section 689 of Title 20 of the Laws of Puerto Rico Annotated are not repugnant to the Constitution of the United States of America and constitute the expression of a reasonable, valid and legitimate compelling state interest.

8. The practice of professions such as plaintiff's is authorized under the terms and conditions determined by the laws of the Commonwealth of Puerto Rico.

9. Plaintiff has an adequate remedy at law which can be pursued in the courts of the Commonwealth of Puerto Rico.

10. Plaintiff has not exhausted the local remedies available to her.

11. This Court should abstain from assuming jurisdiction in this case and allow the Courts of the Commonwealth of Puerto Rico the opportunity to pass upon the issues raised by plaintiff.

San Juan, Puerto Rico, December 21, 1973.

Francisco De Jesus Schuck
Attorney General

R. Adolfo De Castro
Assistant Attorney General

Nellie Ortiz Torres
Director General
Litigation Division

By: /s/ Jaime A. Rodriguez Lecoeur
Jaime A. Rodriguez Lecoeur
Attorney, Department
of Justice

(Certificate omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL No. 74-520

SERGIO PEREZ NOGUEIRO,

Plaintiff,

v.

BOARD OF EXAMINERS OF ENGINEERING, ARCHITECTS AND SURVEYORS OF PUERTO RICO,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

(Filed May 6, 1974)

TO THE HONORABLE COURT:

NOW COMES THE PLAINTIFF by his undersigned counsel and respectfully alleges and prays:

I

This cause is based on the following constitutional, treaty and statutory provisions of the United States:

1. Due Process and Equal Protection Clauses of the Fifth or Fourteenth Amendments to the Constitution of the United States.
2. Supremacy Clause of the United States Constitution, (Article VI, Section 2).[1]
3. Articles 55c and 56 of the United Nations Charter.[2]
4. 42 U.S.C.A. 1981.[3]
5. 42 U.S.C.A. 1983.[4]
6. 28 U.S.C.A. 1343 (3) and (4).[5]
7. 28 U.S.C.A. 2281 and 2284.

Plaintiff herein is a native of Spain. Although not a citizen of the United States, he is a legal resident of the

(Footnotes on pages 13 and 14.)

Commonwealth of Puerto Rico by or under the authority of the Immigration and Naturalization laws of the United States pursuant to his alien registration No. A-19 687 197. He is a qualified civil engineer who in 1965 obtained his degree in La Gran Colombia University, Bogotá, Colombia, where he also achieved a bachelor degree in the Science of Education and Mathematics and in the Science of Education and Physiochemistry. Previously, in 1955, he had graduated from the Normal Teachers School of Lugo, Spain, obtaining the degree of National Teacher, and in 1956, at Madrid's Central University, he took courses leading to a bachelor degree in Physical Sciences.

In 1971, at the University of Puerto Rico, plaintiff took and approved courses leading to a master degree in Administration and Curriculum, and in 1973 he received his master degree in Planning, specialized in Urban Planning. Moreover, at the University of Puerto Rico he took and passed various continuous educations courses, among them Road Planning and Construction employing PERT-CPM computer methods. He also took and passed the Introduction to Third Generation IBM (SYS/70) Machines course, employing FORTRAN IV language programming.

Besides his training and academic achievements, plaintiff is an experienced civil engineer who designed and built the new installations of the ARTE-ACERO factory owned and operated by his brother in Suba, Bogotá, Colombia. In 1972, as a bachelor in engineering he worked for the Bureau of Engineering Programming of the Highways Authority of the Commonwealth of Puerto Rico as a consultant on the use of the ICES-Rods, Pert-Cpm system employing computers. In 1971 plaintiff worked as a civil engineer, part-time for Dinos & Vafi, Consulting Engineers, in highways design and structural estimates of building and bridges. In 1970 he worked for contractor Florentino Alvarez as a working partner making estimates for jobs bid on, such as the Institute of Culture, Casa Blanca and Arsenal restora-

tions, as well as the Cathedral of San Juan, Puerto Rico. Earlier, in Bogotá, Colombia, around mid-1970 he operated as contracting engineer, having designed, structurally estimated, budgeted and built a six-story building in Bogotá. From early to mid-1968 he worked as a sanitary engineer for the Bureau of Public Health of the Bogotá Special District in charge of pollution and environmental health. All of the foregoing in addition to initial experience right after graduation in Colombia.

Plaintiff is at present in the employ of the public Works Department of the Municipality of Carolina, Puerto Rico, pursuant to a limited and restrictive authorization issued by defendant Board of Examiners of Engineers, Architects and Surveyors of Puerto Rico after he approved the written examination (validation) required by law. Said certification reads:

"COMMONWEALTH OF PUERTO RICO
"PUERTO RICO BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS
"BOX 3271, SAN JUAN, PUERTO RICO
"CERTIFICATION 50

"I, JUSTINO VALLES, Administrative Officer of the Puerto Rico Board of Examiners of Engineers, Architects and Surveyors, HEREBY CERTIFY, that SERGIO PEREZ NOGUEIRO approved a written examination in accordance with Act 399 of May 10, 1951 as amended by Acts 119 of June 29, 1964 and 121 of June 8, 1967. That the approval of this examination grants him the right to practice ENGINEERING solely and exclusively as an employee of Agencies and instrumentalities of the Commonwealth of Puerto Rico, Municipal Governments and Public Corporations.

"I, FURTHER CERTIFY: That the limitation imposed on MR. SERGIO PEREZ NOGUEIRO right to practice *Engineering* are those required by acts 119 of June 29, 1904 and 121 of June 8, 1967, because of his citizenship. Mr. SERGIO PEREZ NOGUEIRO is entitled to be automatically registered as an ENGINEER without limitations as soon as he presents the Naturalization Certificate as American Citizen.

"IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Puerto Rico Board of Examiners of Engineers, Architects and Surveyors, at the City of San Juan, this 2nd day of March, nineteen hundred and seventy three.

/s/ JUSTINO VALLES
Justino Valles
Administrative Officer."

III

Defendant Board of Examiners of Engineers, Architects and Surveyors is entrusted with the enforcement, application and administration of Acts 119 of June 29, 1904, as amended by Acts 399 of May 10, 1951, 119 of June 29, 1964 and 121 of June 8, 1967, Title 20, Sections 681-710, L.P.R.A,. regulation and licensing the practice of engineering, architecture and surveying in the Commonwealth of Puerto Rico.

Section 689 (3)(a), Title 20, L.P.R.A., in its relevant part to this action, provides as follows:

"§ 689. Qualifications for registration in the Board's registry

"In addition to what has already been provided in this section, it shall be required that applicants for registration in the Board's registry *be citizens of the United States of America and reside in the Commonwealth of Puerto Rico for not less than one year before their applications.* Provided, that the requisite of being a citizen of the United States of America shall not apply to engineers, architects and surveyors who have studied the total courses and have received their corresponding grade or certificate in the Commonwealth of Puerto Rico, provided that the approved course of study and institution where he has studied fulfill the qualifications fixed by sections 681-710 of this title, as the case may be; Provided, That the appli-

cants shall meet all the qualifications fixed by this act for registration in the Board's registry."

• • •

WHEREFORE, plaintiff respectfully prays this Honorable Court to:

1. Take jurisdiction of this case and certify, in view of the substantial constitutional nature of the questions raised in this complaint, the necessity for convening a statutory three-judge District Court, and that such Court be duly and speedily convened to hear and determine this case as provided by law, pursuant to Title 28 of the United States Code, Sections 2281 and 2284, although plaintiff respectfully avers that relying on the overwhelming U.S. Supreme Court jurisprudence in *Graham* v. *Richardson,* 403 U.S. 365 (1971) *Dougall* v. *Sugarman,* 93 S.Ct. 2861 (1973); and *In re Griffiths,* 93 S.Ct. 2851 (1973), as well as this Court's ruling in *Santin Arias* v. *Examining Board of Refrigeration and Air Condition Technicians,* 353 F. Supp. 857, 860-62 (1972), this action can be disposed of by this Honorable Court without convening the three-judge panel.

2. Adjudge and decree subsection (3)(a) of Section 689, Title 20, L.P.R.A., unconstitutional on its face because its operation, enforcement and application as to plaintiff is null and void on the following grounds:

A

Subsection (3)(a) of Section 689, Title 20, L.P.R.A. is repugnant to the Due Process Clause of the Fifth or Fourteenth Amendments to the Constitution of the United States because conditioning the licensing of engineers, architects and surveyors to United States citizenship, or in any manner limiting or restricting the licensing and practice of said professions, as in plaintiff's case, solely on the basis of citizenship constitutes an arbitrary and unreasonable requirement devoid of any rational and justifiable re-

lationship between citizenship and the ability, qualifications and experience to engage in the same. Furthermore, such citizenship requirement arbitrarily and unreasonably deprives plaintiff of his right to unrestrictedly earn his livelihood as guaranteed by the aforesaid Due Process clauses, besides subjecting him to involuntary servitude solely as an employee of agencies and instrumentalities of the Commonwealth of Puerto Rico, Municipal Governments and Public Corporations, as explicitly provided by *Certification 50, supra,* in violation of the 13th Amendment to the Constitution.

B

Section 689(3)(a), Title 20, L.P.R.A., is in conflict with the Equal Protection Clause of the Fifth or Fourteenth Amendments to the Federal Constitution in that it arbitrarily and unreasonably establishes an inherently suspect classification based on nationality or alienage unsupported by any compelling state interest to justify such classification and which, as applied to plaintiff herein, who is otherwise qualified to enter defendant Board's registry of engineers, deprives him of the free, unfettered and unrestricted practice of his chosen profession.

C

Section 689(3)(a), Title 20, L.P.R.A. is in conflict with the Supremacy Clause of the Constitution of the United States (Article VI, Section 2) because it interferes and is hostile to the exclusive powers of Congress to admit or exclude aliens, and with the international obligations undertaken by Congress with foreign nations. Moreover, it runs contrary to the rights accorded by Congress to aliens under 42 U.S.C.A. 1981, 42 U.S.C.A. 1983 and 28 U.S.C.A. 1343(3) and (4).

3. In the event Section 689(3)(a), Title 20, L.P.R.A. is ruled unconstitutional, plaintiff finally prays this Court

to issue a mandatory injunction or any other relief it may deem just and proper to compel defendant Board of Examiners of Engineers, Architects and Surveyors to enter plaintiff's name on its register of engineers and issue to him a certificate or license without any restrictions or limitations whatsoever authorizing him to practice his profession in the Commonwealth of Puerto Rico as he may choose, either in private enterprise or with government agencies and instrumentalities.

4. Issue an order for defendant Board to show cause why the relief sought should not be granted by this Court. Defendant Board shall be served of this process by the U.S. Marshal through its Administrative Officer, Mr. Justino Valles, at its address, 261 Tanca Street, Fifth Floor, San Juan, Puerto Rico.

San Juan, Puerto Rico, this 6 day of May, 1974.

Respectfully submitted,

SANTOS P. AMADEO
JOSE ENRIQUE AMADEO
Counsel for Plaintiff

By: /s/ SANTOS P. AMADEO
Santos P. Amadeo
P. O. Box 21883 University Station
Río Piedras, Puerto Rico 00931

FOOTNOTES

[1] Page 1. Article VI, Section (Supremacy Clause) of the Federal Constitution provides:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

[2] Page 1. Article 55c of the United Nations Charter provides:

> "Article 55
>
> "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, the United Nations shall promote:
>
> • • • • • • • • • •
>
> "c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Article 56 of the United Nations Charter provides:

> "All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

[3] Page 1. 42 U.S.C.A. 1981 provides:

> "Equal rights under the law
>
> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

[4] Page 1. 42 U.S.C.A. provides:

"Civil actions for deprivation of rights

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[5] Page 1. 28 U.S.C.A. 1343(3) and (4) provides:

"Civil rights and elective franchise

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

• • • • • • • • • •

"(3)To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all person within the jurisdiction of the United States;

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

(Caption Omitted in Printing)

MOTION TO AMEND COMPLAINT

(Filed December 9, 1974)

To The Honorable Court:

Comes Now the plaintiff through the undersigned Counsel, and respectfully alleges and prays:

1.—That in plaintiff's Complaint filed before this Court on May 6, 1974 appears as party-defendant the Board of Engineers, Architects and Surveyors of Puerto Rico.

2.—That the plaintiffs wishes to incorporate as party-defendant, not only the Board above mentioned, but also the Members of Such Board, which is composed of the following persons:

1.—Leonel Fernández, President.

2.—Genaro Negrón,

3.—Guillero Cruz González,

4.—Víctor Labión,

5.—Pedro Santiago Rivera,

6.—Milton Castro, and

7.—Juan M. Portela, *as Members,* all of whom were summoned with copies of the Complaint by the United States Marshal, through Mr. Justino Valles, Administrative Officer of the Board.

Respectfully Submitted, this 6th day of December, 1974.

Dr. Santos P. Amadeo
Jose Enrique Amadeo

By: /s/ Santos P. Amadeo
Dr. Santos P. Amadeo
Counsel for Plaintiff Sergio Pérez Nogueiro
P. O. Box 21883 University Station
Río Piedras, Puerto Rico 00931

(Certificate Omitted in Printing)